


# Practical Challenges of Separation of Powers Between the Central Government and the Kurdistan Region in the Iraqi Constitution

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The principle of separation of powers, as the cornerstone of constitutional government and the rule of law, faces significant practical challenges within the federal system of Iraq, particularly in the relationship between the central government in Baghdad and the Kurdistan Regional Government (KRG). The Iraqi Constitution formally recognizes the federal system. It grants various competences for implementing federalism and, based on the principle of division of powers and responsibilities, establishes coordination and balance between the federal government and local governments. This article examines the constitutional framework established by the 2005 Iraqi Constitution, which recognized Kurdistan as a federal region with legislative, executive, and judicial powers, and analyzes the ongoing disputes between federal and regional authorities. Through the study of key constitutional provisions, Federal Supreme Court rulings, and practical governance issues, the research demonstrates how the theoretical guarantees of the Constitution have been undermined by political, economic, and legal conflicts. The analysis focuses on critical areas such as oil and gas governance, revenue distribution, electoral procedures, and judicial independence, showing how ambiguity in constitutional provisions has led to competing interpretations and institutional disputes. The findings reveal that while the Iraqi Constitution theoretically establishes a framework for federal governance based on separation of powers, its practical implementation has been obstructed by centralizing tendencies, judicial overreach, and the lack of effective mechanisms for resolving federal–regional disputes. This study contributes to understanding the broader challenges faced by federal systems in post-conflict states and the complex relationship between constitutional design and political reality.

**Keywords:** Separation of powers, federalism, Iraqi Constitution, Kurdistan Regional Government, constitutional disputes, rule of law

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## 1. Introduction

The concept of the separation of powers, first systematically articulated by Montesquieu and later refined by constitutional theorists, functions as a

fundamental principle to limit state authority and protect individual rights in democratic systems (Montesquieu, 1748). In federal systems, this principle becomes particularly complex because it operates both horizontally, between the different branches of



government, and vertically, between different levels of government (Elazar, 1987). Iraq's constitutional experience since 2005 offers a compelling case study of how the theoretical provisions of the Constitution regarding separation of powers and federalism interact with the political realities of governance in a post-conflict environment.

One of the features of federal systems is the division of powers and responsibilities between the federal government and regional governments. When a federal state truly exists, powers are divided between the center and the regions so that all authority is not concentrated in the central government; otherwise, the constituent units would not feel autonomous. The purpose of the federal system is to meet the demands of the constituent units of the federal state for recognition and preservation of their characteristics, which can only be realized if these units exercise authority. Since neither federal nor regional authorities can possess the same powers as in a unitary state, the distribution of power in a federal system has special significance.

Federalism is a form of governance for resolving domestic and regional conflicts, especially in developing societies characterized by profound social, economic, political, demographic, and other forms of heterogeneity (Brown, 2005b). The Iraqi Constitution of 2005 created a federal system that recognized the Kurdistan Region as a federal region with significant autonomy, including legislative, executive, and judicial powers, as stated in Article 117 ("Constitution of the Republic of Iraq," 2005). This constitutional framework was designed to address the historical demands of the Kurdish population while preserving Iraq's territorial integrity through a federal arrangement. However, the implementation of this federal system has faced challenges, particularly regarding the delineation of powers between the central government and the Kurdistan Regional Government (KRG). The distribution of authority and its supervision has consistently been a contentious issue (Mohammad et al., 2023).

The constitutional drafting process of Iraq's 2005 Constitution was marked by political disputes among various groups, exposing the challenges arising from sociological diversity. Contentious issues included the name of Iraq, the role of religions and sects—particularly Islam as a source of legislation—and federalism. The proposal of federalism after the fall of the Ba'ath regime

and its inclusion in the new Constitution was accompanied by sharp disagreements. In fact, one of the main reasons for the temporary boycott of the drafting process by Sunni representatives was the introduction of federalism (Budaghi, 2021).

Practical challenges to the separation of powers between Baghdad and Erbil have become evident in areas such as natural resource management, revenue distribution, electoral governance, and judicial oversight. On February 15, 2022, the Iraqi Federal Supreme Court issued a potentially transformative ruling regarding the ownership and control of oil and gas in Kurdistan, marking a critical turning point in federal-regional relations. Two subsequent rulings of the Federal Court curtailed Kurdistan's ability to elect minority representatives and even to pay its employees, illustrating how judicial decisions have deeply impacted regional autonomy.

The relationship between the federal union and the constituent regions is not one of subordination and obedience, as each enjoys sovereignty and autonomy within its capacity. Thus, the organization and nature of these legal and political relations depend primarily on the principle of allocating powers and identifying the matters within their scope of authority and their practical implementation. The distribution of competences between federal and regional governments in domestic affairs, depending on the conditions of each union, is crucial both for achieving the intended objectives and for considering political, economic, military, and ethnic conditions. Accordingly, the Constitution regulates the principle of participation in private jurisdiction (Abdul Mon'em Ahmad Abu, 2009).

The Iraqi Constitution, particularly in Chapters Four and Five, outlines the powers and competences of the central government and federal regions. These competences are divided into three categories. Article 110 specifies the exclusive powers of the federal government, Article 114 defines shared powers, and Article 115 provides that all powers not mentioned in the previous two categories belong to the federal regions and unorganized provinces. Moreover, in cases of conflict between federal and regional laws in areas of shared jurisdiction, regional laws are given priority (Manouei, 2022).

This article examines these challenges through the lens of constitutional law and political theory, analyzing how the theoretical framework of separation of powers has

been tested by the practical governance challenges of Iraq's federal system.

## 2. Theoretical Framework: Separation of Powers and Federalism

### 2.1. Classical Theory of Separation of Powers

The doctrine of separation of powers, as conceptualized by Montesquieu in *The Spirit of Laws*, advocates the division of governmental authority among the legislative, executive, and judicial branches to prevent concentration of power and protect individual liberty (Montesquieu, 1748). This principle has evolved to encompass both formal institutional separation and functional checks and balances among governmental branches (Vile, 1967). It is through this principle that the rule of law is realized (Hemmati Khah et al., 2025).

In the American constitutional tradition, James Madison refined this concept in *Federalist No. 51*, arguing that "ambition must be made to counteract ambition," and that the very structure of government must provide necessary controls against abuses of power (Hamilton et al., 1787). This approach emphasizes not only the separation of powers but also their interdependence and mutual oversight.

### 2.2. Vertical Separation of Powers in Federal Systems

Federal systems add another dimension to the separation of powers by dividing authority between national and local governments. This vertical separation serves multiple functions: accommodating diversity within unity, bringing government closer to the people, and providing additional safeguards against governmental abuse (Elazar, 1987).

The effectiveness of federal systems largely depends on the clarity of constitutional provisions that define federal and regional competences, as well as the existence of mechanisms for resolving disputes between different levels of government (Burgess, 2006). Successful federal systems typically exhibit the following features: (1) a clear constitutional division of powers, (2) an independent judiciary capable of resolving federal-regional disputes, (3) mechanisms for intergovernmental coordination, and (4) a political culture that respects federal principles (Filippov et al., 2004).

### 2.3. Challenges in Post-Conflict Federal Systems

Post-conflict federal systems face unique challenges in implementing the principles of separation of powers. These challenges include weak institutional capacity, competing claims to legitimacy, scarcity of resources, and the persistence of wartime power structures (Roeder & Rothchild, 2005). Under such conditions, constitutional provisions may remain aspirational rather than operational, leading to ongoing disputes over authority and resources.

The Iraqi case is particularly complex due to the legacy of Saddam Hussein's authoritarian rule, the ethnic and sectarian divisions that emerged prominently after 2003, and ongoing security challenges that have affected institutional development (Dawisha, 2009).

There are two types of authority in a federal state. One is the authority administered by the federal government, and the other is the authority exercised by the regional governments or constituent units of the federation. In the first type, the federal government realizes the principle of regional participation while preserving the unity of the federal system. The second type of authority consists of the independent systems of the regions administered by their local governments. Without clear constitutional delineation and distinction between these two types of authority, confusion and conflict will inevitably arise. Consequently, both federal and regional governments justify their actions in ways that may lead to disputes that are difficult to resolve. (Sattar Jabir, 2020).

In principle, the federal government and the regions agree on the distribution of competences under the federal constitution. Only the federal government possesses sovereign authority in external affairs, while the regions, as constitutionally based entities, exist only internally with a limited number of exclusive powers. These powers fall outside sovereign competences, which are reserved exclusively for the federal government. In this sense, sovereignty belongs to the federal government and cannot be divided among the regional governments.

Therefore, the constitutions of federal states must define competences in such a way that multiple interpretations are avoided. In such circumstances, there remains no doubt about the continuity and development of the union, and assurance is provided that competences are

distributed in a manner that sustains and strengthens federal arrangements.

### 3. Constitutional Framework: The Iraqi Constitution and Federal Structure of 2005

#### 3.1. Historical Context and Constitution-Making

The 2005 Iraqi Constitution emerged from a complex political process following the U.S.-led invasion of 2003 and the collapse of the Ba'ath regime. The drafting process involved intense negotiations among Shia, Sunni, and Kurdish political groups, each seeking to safeguard their interests within the new constitutional order (Brown, 2005a). The Constitution emphasized the principles of participation and equality among Iraq's diverse groups (Qasim Baiz et al., 2023), while also laying the foundation for preserving Iraq's territorial integrity (Sorani et al., 2022).

The Kurdish negotiators, drawing on their experience of autonomy since 1991, insisted on the recognition of Kurdistan's federal status and significant autonomy in the Constitution. This led to the inclusion of provisions that, beyond ordinary federal arrangements, recognized pre-existing regional authority and institutions (Stansfield, 2007).

Federal constitutions vary in how they define and allocate powers between the federal government and regional governments, depending on the factors that shape federal formation and the specific conditions of its establishment. A constitution may aim at centralizing power, reinforcing and protecting the regions, or creating a balance between federal and regional authorities (Shorsh Hassan, 2009).

The 2005 Iraqi Constitution defines the exclusive powers of the federal government, specifies areas of shared authority between the federal government and the Kurdistan Regional Government, and allocates all remaining competences to the Kurdistan Region. Thus, constitutional arrangements are conceptualized around exclusive, shared, and residual competences. As the Constitution affirms, any matter not falling within the exclusive competence of the federal government is left to the regions and provinces not incorporated into a region ("Constitution of the Republic of Iraq," 2005).

According to Article 110 of the Iraqi Constitution, most competences belong to the federal government, including sovereignty, foreign relations, budget, fiscal

policy, nationality, and water resources. However, other matters of lesser importance—such as the regulation of weights and measures or broadcasting frequencies—are also listed under federal authority. Although these appear to be minor issues, their inclusion in the federal government's competences signifies that they fall outside regional and provincial authority. Therefore, any regional legislation concerning these matters is deemed unconstitutional (Shorsh Hassan, 2009).

Most federal constitutions, like Iraq's permanent Constitution, also define areas of shared authority. These are matters in which the federal government and regional governments are expected to cooperate in exercising competences. Article 114 of the Iraqi Constitution identifies shared competences as follows:

1. Customs management and regulation, in coordination with regional and provincial governments not incorporated into a region.
2. Regulation and distribution of electric power.
3. Formulation of environmental policy to protect against pollution and safeguard cleanliness, in cooperation with regions and provinces not incorporated into a region.
4. Development policy and public planning.
5. Public health policy, in cooperation with regions and provinces not incorporated into a region.
6. Educational policy, in consultation with regions and provinces not incorporated into a region.
7. Water resources policy and regulation, in a manner that ensures fairness, subject to legislation.

These areas constitute the shared competences between the federal government and regional governments in Iraq ("Constitution of the Republic of Iraq," 2005). The Constitution also emphasizes that the term *policy* in Articles 110 and 114 refers to regulatory frameworks, not to the direct implementation of such policies. Implementation falls within the competence of the regions, while the federal legislature enacts the general legal framework. This arrangement creates variations in policy execution between the Kurdistan Region and other parts of Iraq, as recognized in Article 121 of the Constitution, which grants regions the authority to exercise legislative, executive, and judicial powers (Muhannad Faisal, 2016).



### 3.2. *The Special Status of the Kurdistan Region*

One of the main obstacles to the full realization of federalism in Iraq is how the borders of the regions are drawn. Looking at Iraq's ethno-religious composition and its political geography reveals the importance of this issue. The ethno-sectarian structure of Iraq shows that establishing completely homogeneous and unified regions is impossible, since ethnic and religious groups are intermingled in many areas (Brancati, 2007).

The Kurdistan Region exercises its own competences independently. It enjoys the freedom, within its constitutional right, to amend its regulations, principles, and laws without oversight or directives from the federal government or any other region. It is subject only to its own legislature, since any federal oversight over the Region would contradict the real nature of a federal system. Therefore, the Region has the competence to conduct its internal affairs with relative autonomy and, provided there is no contradiction with the federal constitution, it holds a constitutionally guaranteed right to regulate its own affairs (Karwan Orrahman, 2017).

Although the Constitution does not explicitly enumerate all the competences of the Kurdistan Region, it specifies shared powers between federal and regional authorities and, more importantly, recognizes the Kurdistan Region as a federal entity. This recognition grants legitimacy to the Kurdistan Constitution and the powers of its legislative, executive, and judicial institutions since their establishment. It also validates all laws and decisions issued by the Kurdistan Region, except those that contradict the exclusive powers of the federal government (Soran Ali, 2017).

The Iraqi Constitution also grants the Kurdistan Regional Government (KRG) the right to amend the application of federal laws in areas outside the exclusive competence of the federal government, in case of conflict or contradiction with regional laws ("Constitution of the Republic of Iraq," 2005). Regarding revenues, the Constitution requires that the federal government allocate an appropriate share of national income to the regions, taking into account their resources, needs, and population ("Constitution of the Republic of Iraq," 2005). This provision is of great importance to the Kurdistan Region; however, both the federal and regional governments have frequently violated it. As a result, the people of Kurdistan have borne heavy costs, with the

Region's economy remaining unstable and its employees suffering severe consequences.

At the outset of Iraq's post-2005 constitutional order, the Kurdistan Region was allocated 17% of Iraq's total revenues after deducting sovereign expenses. Yet, after several years, this share was reduced arbitrarily to 12.67%, without statistical or legal justification, largely in reaction to the Kurdistan independence referendum (Amjad Zain al-Abidin, 2014). This reduction was perceived as a grave injustice against the Kurdish people, inflicting significant losses on employees and public servants in the Region. In response, the KRG began extracting and selling oil independently, under the banner of economic self-sufficiency, without referring to the federal government. This move heightened tensions between Baghdad and Erbil, exposing the lack of constitutional clarity and the competing interpretations of federal provisions. According to the Constitution, the Federal Supreme Court is the authority responsible for adjudicating disputes between the federal government and regional governments ("Constitution of the Republic of Iraq," 2005).

Among the competences explicitly reserved to the Region is the administration of its internal affairs, including the establishment and organization of internal security forces such as police, intelligence, and regional defense forces ("Constitution of the Republic of Iraq," 2005). It is noteworthy that the KRG has successfully developed strong police, security, and border guard forces, contributing to relative stability in the Region, even though occasional violations—common even in advanced democracies—have occurred.

Although the Constitution defines federal–regional relations through explicit allocation of competences, in practice, these relations have been fraught with crises and disputes. The most prominent of these involve the demarcation of borders, the role of the *Peshmerga*, and disagreements over the management of oil and gas fields in Kurdistan, including the status of Kirkuk and the implementation of Article 140 of the 2005 Constitution (Amjad Zain al-Abidin, 2014).

One of the central features of autonomy is the protection of a federal region within its geographical boundaries. While internal affairs fall under the authority of the region, the federal government or any other body has no right to intervene in the destiny of that region. Accordingly, most federal constitutions recognize the

sovereignty of a region over its own borders and prohibit any alteration—whether separation or annexation—without the consent of the region itself (Ibrahim Salih Qadir, 2019).

Article 112 of the Iraqi Constitution provides that the federal government, together with regional governments and oil-producing provinces, shall manage oil and gas extracted from present fields, with revenues distributed fairly in proportion to the population and with special allocations for regions damaged by the previous regime. Federal and regional governments are also required to cooperate in formulating strategic policies to develop oil and gas resources for the benefit of all Iraqis, based on market principles and by encouraging investment ("Constitution of the Republic of Iraq," 2005). Yet, this provision has not been implemented, and nearly two decades after the adoption of the Constitution, Iraq still lacks a federal oil and gas law.

In response, the KRG passed its own Oil and Gas Law No. 22 of 2007, which regulates the management of oil resources within the Region ("Law No. 22 of 2007 - Oil and Gas Law of Kurdistan Region," 2007). This law authorizes the KRG to manage oil fields discovered after August 15, 2005, while revenues from earlier fields remain subject to federal constitutional provisions. The law also establishes that, in cases of conflict over shared competences between federal and regional authorities, regional law shall take precedence. It requires oil revenues to be collected in a national revenue fund, overseen by a joint committee in accordance with Articles 106, 112, and 121 of the Constitution, with a special account for the Kurdistan Region ("Law No. 22 of 2007 - Oil and Gas Law of Kurdistan Region," 2007).

Disputes over these provisions culminated in 2012, when the federal government filed a case against the KRG before the Federal Supreme Court. Although the case was delayed for years due to political compromises, it resurfaced as Baghdad strengthened its political and economic position. On February 15, 2022, the Court ruled that the KRG's Oil and Gas Law No. 22 of 2007 was unconstitutional, contradicting Articles 110, 111, 112, 115, 121, and 130 of the Constitution. The Court ordered the KRG to deliver all oil produced by its Ministry of Natural Resources to the federal Ministry of Oil and granted the federal government the right to review and annul contracts signed by the KRG with foreign states and companies (Draw, 2023).

This ruling has been widely criticized as politically motivated rather than purely legal, given that it took the Court nearly a decade to reach a decision and that it was passed with seven Arab judges in favor and two Kurdish judges dissenting. This underscores the political nature of the issue and highlights the need for mechanisms that allow the Kurds to exercise veto power over decisions that disproportionately affect the Kurdistan Region.

### 3.3. Key Provisions of the Iraqi Constitution

#### 3.3.1. Federal Structure (Articles 116–117)

Article 116 of the Iraqi Constitution stipulates that "the federal system in the Republic of Iraq is composed of the capital, regions, decentralized provinces, and local administrations." Article 117 explicitly recognizes that "this Constitution, upon coming into force, recognizes the Kurdistan Region along with its existing authorities as a federal region" ("Constitution of the Republic of Iraq," 2005).

This recognition was unprecedented because it acknowledged pre-existing regional institutions rather than creating new ones, thereby constitutionalizing the de facto self-rule that had existed in Kurdistan since 1991.

#### 3.3.2. Distribution of Power (Articles 109–115)

The Constitution seeks to define the competences of federal and regional authorities through Articles 109–115. Article 110 lists the exclusive powers of the federal government, including foreign policy, defense, monetary policy, and interregional water resources. Article 115 grants the regions the right to exercise executive, legislative, and judicial powers over all matters not specified as exclusive federal competences.

Importantly, Article 111 states that "oil and gas are the property of all the people of Iraq in all the regions and provinces," while Article 112 provides that the federal government and regional governments shall jointly manage oil and gas extracted from "present fields," whereas new fields fall under the jurisdiction of the regions and provinces. This ambiguous formula has been a persistent source of disputes.

### 3.3.3. *Supremacy of Regional Laws (Article 121)*

Article 121 establishes a hierarchical relationship between federal and regional law, stipulating that in cases of contradiction, regional constitutions and laws take precedence over federal laws, except in matters within the exclusive competence of the federal government ("[Constitution of the Republic of Iraq](#)," 2005). This grants the regions significant autonomy but also creates potential disputes over the scope of exclusive federal powers.

### 3.4. *Institutional Framework*

The Constitution establishes several institutions to manage federal–regional relations, including:

1. **Federal Supreme Court (Article 92):** Responsible for interpreting the Constitution and adjudicating disputes between the federal government and the regions.
2. **Council of Representatives (Articles 48–62):** The federal legislature, representing all regions and provinces.
3. **Federal Council (Article 65):** Intended to represent the regions and provinces in federal decision-making, though it has never been established in practice.

The absence of the Federal Council has deprived Iraq of a crucial institutional mechanism for federal–regional coordination, concentrating authority within bodies dominated by the federal government.

## 4. *Areas of Constitutional Dispute*

### 4.1. *Oil and Gas Governance*

The most important and persistent area of dispute between the federal government and the Kurdistan Regional Government (KRG) concerns the management of oil and gas resources. The constitutional provisions in Articles 111 and 112 created an ambiguous framework that has been interpreted differently by federal and regional authorities.

#### 4.1.1. *The KRG's Legal Position*

The KRG has argued that Article 112 on joint management applies only to "present fields" (fields producing at the time of the Constitution's adoption),

while new fields fall under the residual powers granted to the regions by Article 115. Based on this interpretation, the KRG enacted Oil and Gas Law No. 22 of 2007, establishing a legal framework for regional oil and gas development ("[Law No. 22 of 2007 - Oil and Gas Law of Kurdistan Region](#)," 2007). The KRG maintains that the 2005 Constitution, particularly Article 117, recognizes Kurdistan as a federal region with legislative, executive, and judicial powers and distributes competences between federal and regional institutions. In its official statements, the KRG has further argued that Article 112 does not place oil and gas under the exclusive jurisdiction of the federal government.

The KRG has signed production-sharing contracts with international oil companies and pursued independent oil marketing, generating significant revenues that were not shared with the federal government (Mills, 2016).

#### 4.1.2. *The Federal Government's Legal Position*

The federal government has consistently maintained that natural resources belong to all the people of Iraq and must be managed by federal institutions. This interpretation emphasizes Article 111's declaration that oil and gas "belong to all the people of Iraq" and views Article 112's joint management clause as applying to all oil and gas resources. The federal government has passed laws and regulations confirming its control over the oil sector and has challenged KRG contracts through various legal mechanisms (Natali, 2010).

#### 4.1.3. *The Federal Supreme Court Ruling*

In February 2022, the Federal Supreme Court issued a landmark ruling declaring the KRG's Oil and Gas Law of 2007 unconstitutional. The Court invalidated the legal foundations of the Kurdish oil sector and effectively confirmed federal control over all oil resources. It ordered the KRG to deliver all revenues to Baghdad, while the KRG and its international partners sought to preserve existing production contracts. This ruling has had profound implications for the finances and autonomy of the Kurdistan Region.

#### 4.1.4. *The KRG's Response and Ongoing Disputes*

The Kurdistan Judicial Council responded by declaring that its Oil and Gas Law (No. 22 of 2007) did not violate the Constitution and should be considered "permanent

law.” This highlighted the fundamental dispute over constitutional interpretation and judicial authority. The KRG’s Ministry of Natural Resources further asserted that “no court in Baghdad has jurisdiction to make such declarations,” thereby rejecting federal judicial authority in regional matters.

#### 4.2. *Electoral Governance and Minority Representation*

Another major area of dispute concerns electoral procedures and minority representation in Kurdistan. The Iraqi Federal Supreme Court has intervened in regional electoral matters, intensifying disputes between Erbil and Baghdad. This judicial interference represents a significant encroachment on regional autonomy, since the management of elections has traditionally been considered a regional competence under Kurdistan’s autonomy arrangements (Rouhi & Bayz, 2021).

#### 4.3. *Judiciary and Constitutional Interpretation*

The relationship between federal and regional judicial bodies is another source of constitutional tension. The KRG maintains its own judiciary, including a regional supreme court, while the Federal Supreme Court claims ultimate authority in constitutional interpretation. This tension was particularly evident in response to federal court rulings on oil and gas, where regional courts challenged the authority of the Federal Supreme Court. The lack of clear constitutional provisions delineating federal and regional judicial competences has further exacerbated these disputes.

#### 4.4. *Revenue Distribution and Fiscal Federalism*

Revenue distribution between the federal and regional governments remains a constant source of conflict. The Iraqi Constitution does not establish clear mechanisms for revenue sharing, resulting in temporary arrangements that often collapse.

Traditionally, the Kurdistan Regional Government (KRG) has received a percentage of the federal budget based on population estimates. However, this arrangement has been complicated by disputes over oil revenues, census data, and the Region’s financial obligations. The federal government has periodically withheld budget allocations to pressure the KRG on various issues, while the KRG has sought to develop independent revenue sources.

## 5. **The Federal Supreme Court and Constitutional Interpretation**

### 5.1. *Role and Composition of the Federal Supreme Court*

The Federal Supreme Court of Iraq, established under Article 92 of the Constitution, serves as the highest judicial authority for constitutional matters and as the final arbiter of disputes between the federal and regional governments. The law governing the Court, adopted in 2005 and amended several times, provides that the Court is composed of judges and experts in Islamic jurisprudence and law, appointed by the Higher Judicial Council and confirmed by the Council of Representatives. The composition and appointment process of the Court, particularly regarding regional representation and the balance between legal expertise and political considerations, has been highly contested (Al-Ali, 2014). Kurdish officials have repeatedly criticized the Court for bias toward centralization and insufficient regional representation.

### 5.2. *Key Constitutional Interpretations*

#### 5.2.1. *Oil and Gas Decisions*

The Court’s most significant interventions concern the management of oil and gas. Its February 2022 ruling declared the KRG’s oil contracts unconstitutional and affirmed federal control over all oil and gas resources. This ruling represented a maximalist interpretation of federal powers, effectively nullifying regional oil laws and contracts.

The Court based its decision on Articles 111 and 112 of the Constitution, interpreting them as requiring exclusive federal control over natural resources. This interpretation directly contradicted the KRG’s reading of the same provisions and was rejected by regional authorities.

#### 5.2.2. *Electoral and Political Decisions*

The Court has also intervened in regional electoral matters, including decisions affecting minority representation and electoral procedures. These interventions have been criticized as federal judicial overreach and violations of regional autonomy.



### 5.2.3. *Administrative and Financial Decisions*

Federal Court rulings have extended to regional administrative and financial independence, including judgments related to salary payments and administrative procedures. These decisions have been viewed as part of a broader trend toward centralization.

### 5.3. *Challenges of Legitimacy and Authority*

The legitimacy and authority of the Federal Supreme Court have increasingly been challenged by regional institutions and political leaders. Kurdish parties have stressed the importance of refusing unconstitutional decisions imposed by Baghdad, reflecting a broader regional resistance to federal judicial authority (Yusuf Muhammad, 2012).

Court decisions have often been implemented selectively, with federal institutions enforcing rulings that reinforce centralization while regional authorities resist compliance with those perceived as undermining autonomy. This selective enforcement undermines the rule of law and the supremacy of the Constitution.

### 5.4. *Challenges in Exercising Autonomous Powers*

In a democratic system, the constitution is regarded as a social contract among the people, establishing democratic principles, limiting absolute power, and creating mechanisms for the peaceful transfer of authority. Thus, the existence of a constitution and adherence to it ensures the preservation of other features of a democratic system (Yusuf Muhammad, 2012).

The federal system emphasizes federal sovereignty over its constituent units, but this does not mean dissolving the legal personality of the Kurdistan Region. On the contrary, the Region holds the right to self-determination within the framework of the federal state, to freely establish its political and legal system, and to define the mechanisms for exercising its powers, provided these do not contradict the federal constitution ("Constitution of the Republic of Iraq," 2005).

One of the core principles of federalism is that each state or region has the right to draft its own constitution and, through it, organize the legislative, executive, and judicial authorities in accordance with local interests and conditions (Azhar Hashim, 2014). In practice, this means

that while the federal constitution governs the union, regional constitutions govern internal matters.

The Kurdistan Constitution, although still in draft form, is a manifestation of this principle of self-organization. Drafted with 122 articles, it has yet to be enacted, largely due to political disagreements between Erbil and Baghdad (Shorsh Hassan, 2023). The existence of a regional constitution alongside the federal one is considered one of the most important symbols of regional independence in federal states (Ibrahim Salih Qadir, 2019).

The Iraqi Constitution explicitly allows the Kurdistan Region to draft its own constitution to define its competences and mechanisms of governance, as long as these do not contradict the federal constitution ("Constitution of the Republic of Iraq," 2005). However, the failure to finalize and ratify a Kurdish constitution has perpetuated disputes.

The issue also intersects with the unresolved "disputed territories," particularly Kirkuk, under Article 140 of the Constitution. Despite multiple committees and international involvement, including UN Security Council Resolution 1770 (2007), successive Iraqi governments have failed to implement Article 140 (Aras Hassan, 2022).

## 6. **Practical Challenges for the Rule of Law**

The rule of law is built upon specific components, one of the most important being the separation of powers (Rouhi et al., 2017). In this respect, and considering the practical realities in Iraq and the relations between Baghdad and Erbil, it can be said that there are serious challenges that reveal the gap between legal provisions and practical realities on the ground.

### 6.1. *Institutional Capacity and Quality of Governance*

The implementation of constitutional provisions has been hindered by weak institutional capacity at both the federal and regional levels. Several constitutional institutions—such as the Federal Council—have never been established, while others operate with limited resources and expertise.

The quality of governance has been undermined by corruption, clientelism, and the persistence of informal power networks, which frequently disregard the formal constitutional arrangements (Dodge, 2012). These

factors have weakened the effectiveness of the mechanisms designed to uphold the separation of powers.

#### 6.2. *Legal Consistency and Predictability*

One of the formal dimensions of the rule of law is consistency, certainty, and predictability (Rouhi et al., 2016). In practice, however, persistent disputes between Erbil and Baghdad highlight the absence of these elements. Ongoing constitutional disagreements, legal uncertainty, and inconsistent implementation of laws have generated parallel legal frameworks and conflicting enforcement mechanisms.

This legal uncertainty has had tangible consequences for businesses, civil society organizations, and citizens, all of whom must navigate competing legal systems and unclear administrative environments.

#### 6.3. *Access to Justice and Fundamental Rights*

Disputes over judicial jurisdiction have affected citizens' access to justice and the protection of fundamental rights. Undefined jurisdictional boundaries and the existence of competing court systems have created confusion regarding legal remedies and enforcement mechanisms.

Minority communities, in particular, have been disproportionately affected by these disputes, as seen in conflicts over electoral representation and the protection of minority rights within the federal framework.

#### 6.4. *Democratic Governance and Political Participation*

In federal systems, the existence of at least two federal units is generally required. In Iraq, however, only the Kurdistan Region has been established as a federal unit, a situation that is unprecedented globally. The principle of participation is meant to reflect shared power between the federal government and federal units, yet in Iraq, power-sharing has effectively been limited to the federal government and the Kurdistan Region, while provinces continue to be administered as though in a unitary state (Sa'i & Moradi, 2011).

Article 48 of the Constitution states that the federal legislature consists of the Council of Representatives and the Federal Council, while Article 65 provides that the Federal Council should represent the regions and

provinces not organized into regions, with its procedures to be determined by a law passed by a two-thirds majority of the Council of Representatives. The existence of a second chamber, representing federal units, is one of the hallmarks of federal states.

However, the fact that the law governing the Federal Council must be passed by the Council of Representatives itself raises constitutional concerns, since normally, constitutions should directly define or at least set the principles for legislative bodies. The absence of the Federal Council has deprived Iraq's federal system of a vital mechanism for representation and coordination, exacerbating the difficulties of federal governance.

Persistent constitutional disputes have further undermined political participation and democratic accountability at both federal and regional levels. Electoral disputes, parliamentary dissolutions, and disagreements over government formation have weakened democratic processes and citizen representation. These challenges have been compounded by broader constitutional uncertainty surrounding federal-regional relations.

### 7. Conclusion

An examination of the practical challenges of the separation of powers between the central government and the Kurdistan Regional Government under the Iraqi Constitution reveals fundamental tensions between the constitutional text and political practice. While the 2005 Constitution created a federal framework aimed at accommodating regional autonomy within national unity, the implementation of this framework has been marked by ongoing disputes over competences, resources, and constitutional interpretation.

The 2005 Constitution and the implementing laws concerning regions and provinces defined the form of local governance through the delegation and distribution of powers that had previously remained undefined. By combining and equating two systems—administrative decentralization and political decentralization—it reflects both in the authorities of the Kurdistan Region and in the provinces within Iraq. The Constitution formally recognized the Kurdistan Region as a federal unit from the time of its adoption, giving constitutional legitimacy to its legislative, executive, and judicial institutions. It further established that in cases of conflict

over shared competences, regional law takes precedence, since any matter not explicitly reserved for the federal government is transferred to the powers of the regions and provinces not incorporated into regions. This analysis shows that although the principle of separation of powers is theoretically embedded in the Iraqi Constitution through horizontal and vertical divisions of authority, it has been weakened by several factors: ambiguous constitutional provisions that invite competing interpretations, weak institutional capacity to resolve disputes, political dynamics reflecting deeper ethnic and sectarian divides, and judicial decisions that have favored centralization over federal cooperation.

The issue of oil and gas management illustrates these challenges most clearly. The Federal Supreme Court's ruling of February 2022, which centralized control of Kurdistan's oil and gas, represented a decisive shift toward centralization that effectively nullified key aspects of regional autonomy. The KRG's rejection of the ruling and continued assertion of regional authority underscored the limits of constitutional interpretation through judicial decision alone.

Recent court decisions have further undermined the Region's ability to elect minority representatives and even to pay its employees, showing how federal judicial authority has expanded beyond resource management into core aspects of regional autonomy. These developments indicate that Iraq's federal system is undergoing a constitutional crisis that strikes at the very heart of its foundational arrangements.

The findings of this study suggest that Iraq's challenges with separation of powers stem not only from technical legal disputes but also from fundamental disagreements over the nature of the federal pact itself. While the federal government emphasizes national unity and centralized control, regional authorities stress autonomy and the right to self-determination. These competing visions reflect deeper questions about identity, sovereignty, and the distribution of power in post-war Iraq.

Comparative analysis indicates that successful federal systems depend not only on well-designed constitutional provisions but also on institutional mechanisms for dispute resolution and political cultures that support federal cooperation. Iraq currently lacks both effective mechanisms for resolving disputes and a political culture committed to federal principles. The absence of the

Federal Council, the contested legitimacy of the Federal Supreme Court, and the persistence of zero-sum political thinking all contribute to the ongoing crisis.

The implications extend beyond Iraq to broader questions about constitutional design in post-conflict federal systems. Iraq's experience highlights the limits of constitutional engineering in contexts where fundamental political agreements remain unsettled and institutional capacity is weak. It also underscores the importance of international support for constitutional development and the risks of allowing constitutional disputes to erode democratic governance and the rule of law.

Looking forward, addressing these challenges will require significant political will, institutional development, and possibly constitutional reform. The continuing insistence of Kurdish political leaders on rejecting unconstitutional decisions demonstrates the persistence of regional resistance to centralization, while federal institutions continue to assert central authority. The durability of Iraq's federal system may ultimately depend on whether political leaders can find new mechanisms for compromise and cooperation.

This study concludes that while the principle of separation of powers remains theoretically vital for constitutional governance in Iraq, its practical implementation requires renewed attention to institutional design, political culture, and the underlying foundations of the federal pact. Without such attention, Iraq's federal system may continue to experience constitutional crises that undermine both regional autonomy and national unity, serving neither federal nor regional interests effectively.

The broader implications for constitutional theory and practice suggest that federal systems in post-conflict environments require special focus on dispute resolution mechanisms, institutional legitimacy, and the cultivation of constitutional cultures that can sustain federal cooperation over time. Iraq's case provides important lessons for other federations facing similar challenges and underscores the enduring significance of constitutional design for democratic governance and the rule of law.

### Authors' Contributions

Authors contributed equally to this article.

## Declaration

In order to correct and improve the academic writing of our paper, we have used the language model ChatGPT.

## Transparency Statement

Data are available for research purposes upon reasonable request to the corresponding author.

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The authors report no conflict of interest.

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## Ethical Considerations

In this research, ethical standards including obtaining informed consent, ensuring privacy and confidentiality were observed.

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